TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1922

No. [redacted]64

THOMAS F. E. RYAN, APPELLANT,

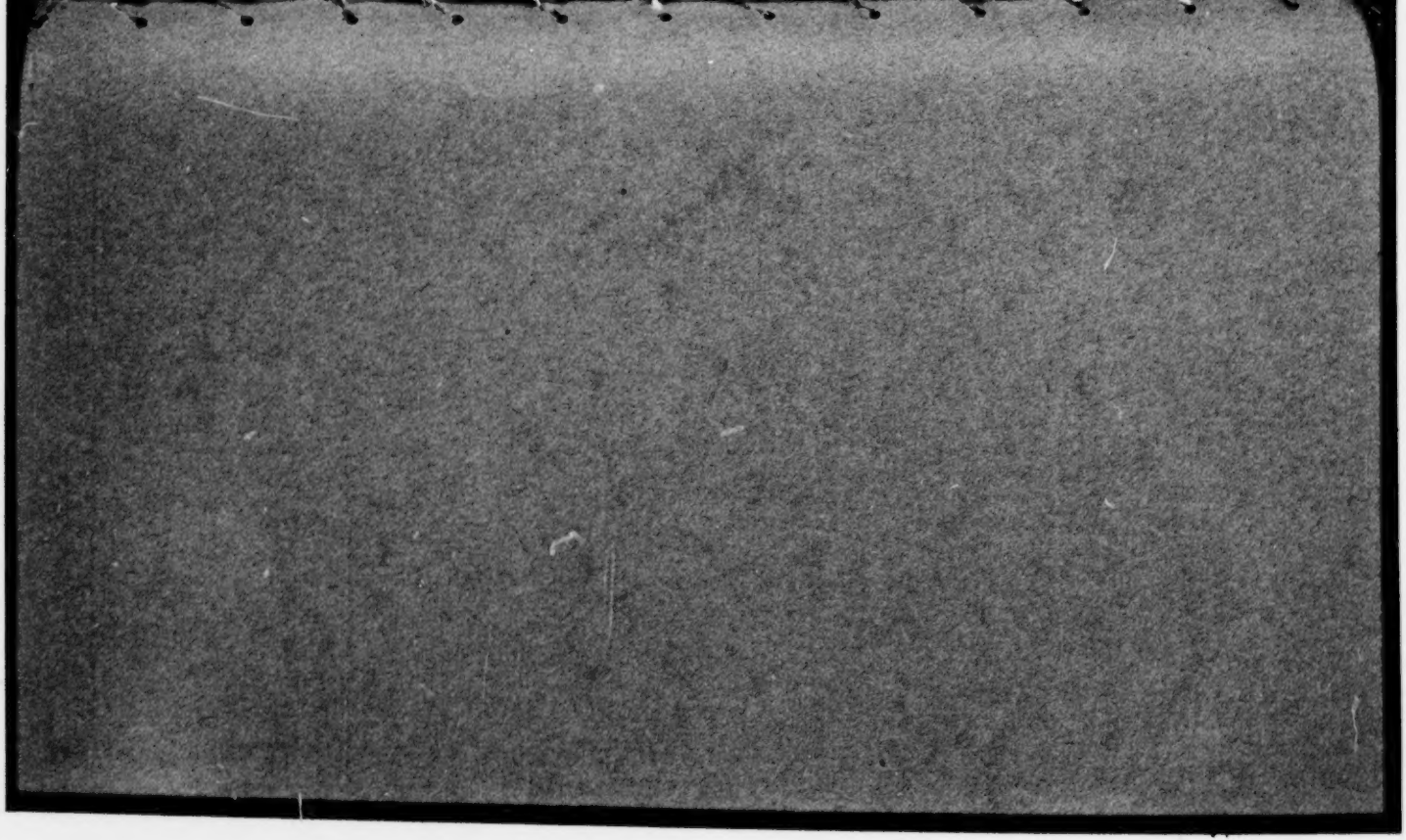
vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED APRIL 9, 1923.

(28,219)



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INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JUNE 22, 1921.

1 Court of Claims.

No. 33223.

THOMAS F. E. RYAN

vs.

THE UNITED STATES.

I. *Petition and Amended Petitions.*

On April 13, 1916, the plaintiff filed his original petition.

On July 2, 1919, by leave of court, the plaintiff filed an amended petition.

On April 13, 1920, the plaintiff filed in open court a motion for leave to file amended paragraphs to the amended petition and it was ordered that said motion be submitted. This motion was overruled by the court on April 19, 1920.

On April 24, 1920, the plaintiff filed a motion for leave to file supplemental petition. On May 3, 1920, the court ordered this motion to the files to await trial of case.

On November 11, 1920, before the argument of the case, plaintiff made a motion, in open court, for leave to file an amended and supplemental petition. Said motion was allowed and plaintiff given five (5) days in which to file said petition.

II. *Amended and Supplemental Petition.*

Filed Nov. 12, 1920.

To the Chief Justice and Judges of the Court of Claims:

The claimant files this amended and supplemental petition, by leave of court granted, to amend and supplement the original petition herein filed April 13, 1916, and respectfully represents and shows:

I. Claimant is a citizen of the United States, residing at 176 E. 108th Street, City and State of New York, and has at all times borne true allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted or given encouragement to rebellion against the said Government.

II. Claimant is employed in the Customs Service of the United States at the port of New York. On the 16th day of April, 1910, claimant was appointed to the office of day inspector of customs in and for the said port of New York. He took the oath of office for said office on said date, and was paid for his services a compensation of Four ($4.00) dollars per diem for every day in the year.

After said date of April 16th, 1910, down to October 11,
2 1919, claimant served continuously at said port as said day inspector of customs at Four ($4.00) dollars per diem, when he was promoted to $5.00 per diem. He was paid $4. for every day in each year after said date of April 16, 1910, down to October 11, 1919, when he was promoted to $5.00 as above stated.

III. Claimant was, and is, at all times hereinbefore and hereinafter mentioned, an employee of the Civil Service of the United States, under the Act of Congress of January 16th, 1883, known as the Civil Service Law.

IV. The Acts of Congress of March 2nd, 1799 (1 Stat. 706) and April 26, 1816, (3 Stat. 306), now section 2733 of the Revised Statutes, provided that each inspector of customs should receive Three ($3.) dollars per diem for each day of service. The Acts of Congress of April 29th, 1864 (13 Stat. 61) and July 23rd, 1866 (14 Stat. 208), now section 2737 of the Revised Statutes, authorized the Secretary of the Treasury to increase the compensation of inspectors of customs in such ports as he might think it advisable to do so, and designate, by adding to the compensation of such officers, a sum not exceeding One ($1.) dollar per diem. Pursuant to the provisions of the said Act of April 29th, 1864, the Secretary of the Treasury, on June 6th, 1864, increased the compensation of all day inspectors of customs in the port of New York, as well as in other large ports, to Four (4.) dollars per diem.

V. The Act of December 16th, 1902 (32 Stat. 753) authorized the Secretary of the Treasury to increase the compensation of the day inspectors of customs at the port of New York by adding to
3 their compensation of Four ($4.) dollars per diem, a sum not exceeding One ($1.) dollar per diem. Pursuant to the provisions of said act, the Secretary of the Treasury, on January 5th, 1903, increased the compensation of all the day inspectors of customs in the said port of New York to Five ($5.) dollars per diem. All the said day inspectors of customs at the said port of New York continued to receive the compensation of Five ($5.) dollars per diem, on and after said date of January 5th, 1903, to, and including the 30th day of September, 1905.

VI. On the 1st day of October, 1905, the Secretary of the Treasury reduced the compensation of all the said day inspectors of customs in the said port of New York to Four ($4.) dollars per diem. All of these day inspectors continued to receive said compensation of Four ($4.) dollars per diem to and including the 31st day of December, 1905. On the 8th day of January, 1906, the Secretary of the Treasury restored the compensation of Five ($5.) dollars per diem to all of the day inspectors at the port of New York, effective January 1st, 1906.

VII. This aforesaid reduction in compensation during the said months of October, November and December, 1905, was brought to the attention of Congress, and that body passed a law known as

the Act of June 30th, 1906, (34 Stat. 634)), appropriating Thirty-one thousand ($31,000) dollars, or so much thereof as might be necessary to pay the inspectors of customs at the port of New York, the difference between the per diem salary of Four ($4.) dollars paid them during the said three months of October, November and December, 1905, and their proper per diem salary for the same period (Five ($5.) dollars per diem), in accordance with the Act of Congress of December 16th, 1902 (32 Stat. 753).

VIII. The Congress passed a further law, known as the Act of March 4th, 1907 (34 Stat. 1373) appropriating the sum of Nine Hundred Forty ($940.) dollars additional, to enable the Secretary of the Treasury to pay certain other inspectors of customs at the port of New York the difference between the per diem salary of Four ($4.) dollars paid them during the said months of October, November and December, 1905, and their proper per diem salary of Five ($5.) dollars for the same period.

IX. The Act of March 4th, 1909 (35 Stat. 1065) authorized the Secretary of the Treasury to increase and fix the compensation of inspectors of customs, as he might think advisable, not to exceed the rate of Six ($6.) dollars per diem. This act provided further, that in all cases where the maximum compensation was paid, no allowance should be made for meals or other expenses incurred by inspectors, when they were required to work at unusual hours.

X. Claimant was not paid for his services as day inspector of customs, more than Four ($4.) dollars per diem from the time he was appointed to said office on April 16th, 1910 until October 1, 1919, as averred in paragraph II herein. Claimant avers that the said Act of March 4th, 1909 (35 Stat. 1065), and the acts prior thereto, conferred no authority upon the Secretary of the Treasury to appoint claimant at the compensation of Four ($4.) dollars per diem. Claimant further avers that he should have been appointed at the compensation of Five ($5.) dollars per diem on April 16th, 1910, as that was the lawful and fixed compensation of the office of inspector of customs in the port of New York.

XI. By virtue of the provisions of Chapter 355 of the Act of 1912, approved August 24, 1912, the President was authorized and empowered to reorganize the customs service so as to bring the total expense thereof within a sum not exceeding Ten Millions One Hundred Fifty Thousand ($10,150,000) dollars. That, pursuant thereto, the President under date of March 3, 1913, issued an executive order effecting a reorganization of the customs service. The said executive order became effective July 1, 1913.

Annexed to said order was a detailed estimate of the expenses of the customs service under reorganization therein provided for. The executive order did not fix the salaries of any of the officers of the customs service other than collectors of customs. The act of Congress authorizing the reorganization of the customs service limited the President to an expense not exceeding Ten Million One Hundred

Fifty Thousand ($10,150,000) dollars. The estimate annexed to the said order contemplated an expenditure of Ten Million Six Hundred Eighty One Thousand, Seven Hundred Sixty Six and 01/100 ($10,681,766.01) dollars, a sum greatly in excess of the limitational amount specified in the said Act of August 24, 1912. Claimant avers that the aforesaid estimate was not, and was not intended to be, a part of the executive order and it did not, and was not intended to, fix the permanent organization of the customs service.

6 Claimant further avers that the Treasury Department, ever since the said executive order became effective, has at all times held and construed the said estimate, and now holds and construes the same to be an estimate only, and that the said Department has, at all times since the said executive order became effective governed itself and acted upon the theory of fact and law that such estimate was an estimate only and in no sense a restriction, limitation or denial of the right and power of the Department to increase or decrease the numbers of the various positions therein provided for, or to increase or decrease the compensation of any of the officers therein mentioned. Furthermore, the said Treasury Department has always regarded and construed the said estimate as being subject to change at the discretion of the Secretary of the Treasury, and claimant avers that the said estimate has been totally disregarded by the Treasury Department in making promotions and in creating additional or different officers. Claimant avers that in the district of New York mentioned in said estimate, innumerable promotions have been made without further legislation by Congress, and that various positions and the salaries thereto attached, as set forth in the said estimate for the district of New York, have been frequently and substantially changed by Departmental action without further legislative action.

Claimant further avers that said estimate made no provision for clerks, deputy collectors or other persons at a salary, or salaries, of $4,000 per annum in the office of the Collector at the port of New York, yet at least two clerks or deputy collectors in said office are now, and have been for several years, receiving $4,000 per annum without further legislative action.

7 Claimant further avers that the salary of the Cashier in the Collector's office at the port of New York was stated at $5,000 per annum in said estimate, but that said salary has been reduced to $4,000 per annum by the Treasury Department without further legislative action.

Claimant further avers that many additional employees, inspectors, clerks and others, for whom no provision was made in said estimate, have been and are now being employed in said port and district of New York, without further legislative action.

Claimant further avers that many positions provided for in said estimate for the port and district of New York have been abolished by the Treasury Department, including the 9 "clerks and acting weighers" therein mentioned, without further legislative action.

That by reason of the foregoing, the said estimate did not fix the permanent organization of the customs service nor did it fix the salaries of any of the employees therein mentioned.

Claimant therefore avers that the said executive order did not effect the salary of the office of inspector of customs in any way, and that the salary of said office in the port of New York was fixed by law at Five ($5) dollars per diem prior to March 4, 1909, and that the Act of March 4, 1909, did not disturb said fixed rate but merely authorized an increase thereof to a maximum of Six ($6) dollars per diem.

XII. Claimant was, and is entitled to compensation for the services rendered by him in the following amounts over and above what he received therefor:

One ($1) per diem from April 16, 1910, to and including October 10, 1919, 3,465 days, amounting to Three Thousand Four Hundred Sixty Five ($3,465) dollars; The only action that has been taken on this claim in the Departments or in the Congress of the
8 United States is that set forth in this petition.

XIII. Claimant is the sole owner of this claim, no other person, or corporation is interested therein, and no assignment or transfer of the claim, or any part thereof, or interest therein, has been made.

XIV. Claimant is justly entitled to the amounts herein named from the United States, as he is advised and believes, after allowing all just credits and set-offs.

Wherefore, He Prays judgment against the United States for the sum of Three Thousand Four Hundred Sixty Five ($3,465) dollars.

SPOOR & RUSSELL,
Attorneys of Record.

DUDLEY & MICHENER,
Of Councel.

DISTRICT OF COLUMBIA, *ss:*

Personally appeared before me, a Notary Public, in and for the District of Columbia, William E. Russell, who, being sworn according to law, deposes and says:

That he is a member of the partnership of Spoor & Russell, attorneys at law, which partnership has been duly authorized by Power of Attorney, to represent the claimant and verify pleadings in this case; that he has read and understands the foregoing petition, and that the matters and things therein stated, are true, in substance and in fact, as he is informed and believes.

WILLIAM E. RUSSELL.

Subscribed and sworn to before me this 12th day of November, 1912.

[SEAL.]

INEZ T. WALDEN,
Notary Public, D. C.

9 III. *General Traverse.*

No demurrer, plea, answer, counterclaim, set-off, claim of damages, demand, or defense in the premises, having been entered on the part of the defendants, a general traverse is entered as provided by Rule 34.

IV. *History of Proceedings.*

On November 11, 1920 this case was argued and submitted on merits.

On December 13, 1920, the court handed down the following order:

Order.

The court deeming it necessary to call for additional facts has made a call on its own motion, and the answers thereto are on file. The cause is now remanded to the Calender for re-argument to the end that the court may have the benefit of the views of the respective parties as to whether the answers to the court's call affect the case.

The case will be set for hearing in January, 1921, at the convenience of counsel.

By THE COURT.

V. *Argument and Submission of Case.*

On January 11, 1921, this case was argued and submitted on the order of remand by Mr. William E. Russel, for the plaintiff, and Mr. Willard D. Harris, for the defendant.

10 VI. *Findings of Fact, Conclusions of Law, and Opinion of the Court by Downey, J.*

Entered February 21, 1921.

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following

Findings of Fact.

I.

Plaintiff is a citizen of the United States and of the State of New York and has at all times borne true allegiance to the Government of the United States and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government.

II.

The plaintiff, Thomas F. E. Ryan, is employed in the Customs Service of the United States. He entered the service as a probation-

ary junior clerk, class C, on April 13, 1899, having first taken and passed a civil service examination for said position. On June 12, 1900, as a result of a promotion examination, he was promoted to clerk, class E, salary $1,000. He was transferred without examination to the position of night inspector at $3 per diem on January 11, 1904. On January 29, 1909, he was promoted after a first-grade promotion examination to clerk, class 1, salary $1,200. On April 9, 1910, effective from date of execution of oath, he was promoted to inspector at $4 per diem (class 2), as a result of a promotion examination. This appointment was made by virtue of a letter of the Secretary of the Treasury to the Collector of Customs at the port of New York, dated April 9, 1910, reading as follows:

"As recommended in your letter of the 7th instant, the following-named persons are hereby appointed inspectors, class 2, new offices, with compensation at the rate of four dollars ($4) per diem, each, to take effect from date of new oath. This will result in an increase of $4,380 per annum in the expenses of your district:

"Thomas F. E. Ryan, now clerk, class 1, at $1,200 per annum.
"Ernest Lockwood, now clerk, class 1, in the office of the appraiser of merchandise, at $1,200 per annum.
11 "James E. Davis, now sugar sampler, class 1, in the office of the appraiser of merchandise, at $1,350 per annum."

Claimant executed the oath on April 16, 1910, reciting therein that—

"I, Thomas F. E. Ryan, having been appointed inspector, class 2, collector's office, port and district of New York, do solemnly swear, etc."

On October 9, 1919, effective from date of execution of oath, he was promoted to inspector, $5 per diem, no examination being required, and executed the oath on October 10, 1919. Effective July 1, 1920, he was by letter of August 25, 1920, promoted to inspector, $5.50 per diem.

III.

From April 16, 1910, until October 10, 1919, he was paid at the rate of $4 per diem and at said rate was paid in all the sum of $13,860 in addition to which during said period he was paid $2,428 as additional compensation under the act of February 13, 1911. Aside from such additional compensation he was at no time paid more than $4 per diem until his promotion, October 11, 1919, to inspector, $5 per diem.

IV.

Pursuant to the provisions of the act of April 29, 1864 (13 Stat. 61), the Secretary of the Treasury, on June 6, 1864, increased the compensation of all inspectors of customs in the port of New York, and in other large ports, from $3 per diem to $4 per diem.

V.

The Secretary of the Treasury, on January 5, 1903, by an official order of that date, approved a recommendation of the collector of customs at New York for the employment from date of new oath "as inspectors of customs, class 4, new offices, with compensation at the rate of five dollars ($5) per diem each" of "the inspectors of customs, class 2, hereinafter named, with compensation at the rate of four dollars ($4) per diem each," and that the positions as inspectors of customs, class 2, thus vacated, be abolished. The order set out the name of each such employee with the serial number theretofore borne by him and designated his new serial number under the new appointment.

Under date of October 2, 1905, the Secretary of the Treasury addressed to the collector of customs at New York an order as follows:

"SIR:

Referring to the decision of the Comptroller of the Treasury, dated February 14, 1905, to your letter of the 22d instant, and confirmatory of department telegram of the 30th ultimo, the employment from date of new oath, to take effect October 1, 1905, of the inspectors, class 4, hereinafter named, with compensation at the rate of five dollars ($5) per diem each, as inspectors, class 2, new office, with compensation at the rate of four dollars ($4) per diem each, is hereby approved and the positions thus vacated are abolished.

12 "Referring further to department letter of the 28th ultimo, you will allow one dollar ($1) per diem additional, as authorized by the act of December 16, 1902, the inspectors for each day when services are rendered by them at unusual hours for which no compensation is otherwise allowed."

A list of 331 names with serial numbers followed, and also 50 names, without serial numbers, under the subhead "Temporary inspectors."

These inspectors were paid a per diem compensation of $4 from October 1 to December 31, 1905, inclusive. It is not shown how many of them received the additional $1 per day for service at unusual hours or in what amount.

On January 8, 1906, the Secretary of the Treasury directed to the collector of customs at New York an order as follows:

"SIR:

As recommended in your letter of the 5th instant, the employment from date of new oath, of the inspectors, class 2 hereinafter named as inspectors, class 4, new offices, with compensation at the rate of five dollars ($5) per diem each, is hereby approved, the increase in compensation to take effect January 1, 1906, and the positions thus vacated to be abolished."

followed by 331 names with serial numbers and four "temporary inspectors."

VI.

Immediately prior to the time of plaintiff's appointment as an inspector of customs at the port of New York, class 2, at a salary of $4 per diem, and continuously since the order of January 5, 1903, recited above, except for the months of October, November, and December, 1905, all inspectors of customs at the port of New York received $5 per diem as compensation for their services, and by virtue of provisions in the deficiency acts of June 30, 1906, and March 4, 1907, compensations for those three months were adjusted on that basis. On April 9, 1910, the Secretary of the Treasury authorized the appointment of three inspectors of customs, class 2, new offices, at a compensation of $4 per diem, as set out in Finding II. From April 16, 1910, until June 30, 1910, 25 inspectors of customs at the port of New York were appointed, class 2, $4 per diem.

At some time, not definitely shown, after the passage of the act of March 4, 1909, Collector Loeb at the port of New York determined upon a reorganization of the customs service at that port and took steps to that end. The reorganization finally agreed upon recommended three grades for inspectors, namely, class 2, with compensation at the rate of $4 per diem each; class 4, with compensation at the rate of $5 per diem each; and class 5, with compensation at the rate of $6 per diem each; and that class 2 be subdivided into class 2 junior and class 2 senior and class 4 similarly subdivided into class 4 junior and class 4 senior; and that class 2 junior, with compensation at the rate of $4 per diem, should be the entrance grade to the position of inspector of customs. The duties of the various grades were provided, provision made with reference to promotions and other matters not necessary to recite. A committee was appointed by the collector, which was instructed to sit as an examining board and to call before it for examination each inspector then in the service, examine him upon all points touching his qualifications
13 and efficiency and recommend the grade to which he should be appointed. In reporting to the Secretary of the Treasury for his approval or otherwise the proposed plan of reorganization, the collector of customs, referring to the desirability of a classification of inspectors based upon length of service, qualification, and efficiency, said:

"It is a generally recognized fact in the employment of men, whether in public or private service, that they will work with much more zeal and energy if there is an opportunity for their efficiency to be recognized by promotion in salary and rank, and in the establishment of these three classes a young man who enters the service at the lowest grade can look forward, if he performs satisfactory service, to advancement to five and eventually six dollars per diem. This grading also gives due recognition to experience as well as ability. I believe that five dollars per diem is too liberal a salary

for a young man just entering the inspectors' corps, without any particular knowledge of customs or experience in the duties of inspector. Under this method the good men will naturally advance to the highest rate of pay, and provision is made for difference in pay for the different capacities of inspectors. Under the old method of giving all inspectors five dollars per diem no allowance was made for the varying capacities of the men in the force, and therefore little incentive existed for performance of the highest grade of work.

"Before taking steps for the reorganization of this force, I conferred personally with the honorable Secretary of the Treasury, and upon receiving his verbal approval, as a preliminary step, I appointed a committee consisting of Mr. F. A. Collins, private secretary to the collector; Mr. Laurence J. Maher, appointment clerk; Dr. C. F. Longfellow, physician, civil service board; Mr. Alexander McKeon, deputy surveyor; Mr. John J. Raczkiewicz, acting deputy surveyor (chairman); and instructed the members to sit as an examining board and call before it each inspector of customs, taking into consideration his age, physical condition, length of service, efficiency, character, and qualifications, and grade him according to this test, and to submit a report and recommendations based on this examination. This the committee has now done and I beg to submit the same herewith with my approval.

"I have gone over, personally, the plan submitted and the reports on the men, and I am very much gratified with the work which the committee has performed, and believe they have executed the task assigned to them in a conscientious and painstaking manner, with a just regard for the best interests of the service and of the individual men involved."

The recommendation of the collector with reference to the reorganization was approved by the Secretary of the Treasury and pursuant thereto 74 inspectors were appointed to class 2, at $4 per diem, 296 to class 4, at $5 per diem and 52 to class 5, at $6 per diem. Some time thereafter four inspectors were promoted from the $5 to the $5.50 per diem class and still later three inspectors, for recognition of valuable services, were promoted from the $4 to the $4.50 class. The reorganization thus provided for was effective as to the whole force from July 1, 1910. The appointment of the plaintiff and others in April, 1910, as inspectors, class 2, $4 per diem,
14 marked their entrance into this service and they were not reappointed under the reorganization but remained inspectors, class 2, under their original appointments.

VII.

The reorganization of the customs service at New York, referred to in the next preceding finding, was continued after the reorganization of the customs service by the President had under authority of the act of August 24, 1912 (37 Stat. 434), and the Executive order of March 3, 1913, effective July 1, 1913, issued pursuant to said act.

VIII.

Attached to the Executive order dated March 3, 1913, effective July 1, 1913, reorganizing the customs service under the authority of the act of August 24, 1912 (37 Stat. 434), was a detailed statement by districts of the estimated expenses for salaries of the customs services under the reorganization. The Treasury Department has at all times since the said Executive order became effective construed said statement as an estimate only and not as a restriction, limitation, or denial of the right to increase or diminish the numbers of the various positions therein provided for or to increase or decrease by promotion or demotion the compensation within statutory limits of any of the offices therein mentioned.

IX.

The Treasury Department during all the period involved herein and prior thereto construed the various acts with reference to the salaries of inspectors of customs as authorizing a classification thereof. It so construed the act of March 4, 1909, and thereunder they were classified as hereinbefore stated. It also so construed the law under the reorganization by the President pursuant to the act of August 24, 1912.

X.

The position of inspector of customs at the port of New York is and has been by the Secretary of the Treasury and by the Civil Service Commission held to be covered by the civil service act of January 16, 1883 (22 Stat., 405), from the time that said act became effective, and promotions, appointments, and transfers have been made pursuant to the regulations and rules promulgated pursuant to said act.

XI.

From and since January 16, 1883, there have at all times been employed in the customs district of New York as many as 50 or more employees.

XII.

The original petition in this case was filed April 13, 1916, and made demand for additional compensation at $1 per diem
15 from April 16, 1910, to and including June 30, 1910, and at $2 per diem from July 1, 1910, to and including April 10, 1916. An amended petition was filed July 2, 1919, in which the demand at $1 per diem for the entire period was brought down to June 30, 1919. The second amended and supplemental petition upon which the case is submitted was filed November 12, 1920.

Subsequent to his appointment and his acceptance thereof on April 16, 1910, the claimant was regularly paid at $4 per diem, and it does not appear that he at any time made any objection or protest as to

the amount of his compensation. It does not appear that he made any demand for other or greater compensation than that paid him until and by the filing of his original petition herein on April 13, 1916.

Conclusion of Law.

On the facts found the court concludes as matter of law that the plaintiff is not entitled to recover and that his petition ought to be and it is dismissed with judgment against him for cost of printing the record herein to be ascertained and taxed by the clerk.

Opinion.

DOWNEY, *Judge*, delivered the opinion of the court:

The plaintiff was, during the period here involved and still is, an inspector of customs at the port of New York. After considerable service in minor capacities, in all of which his appointment followed a proper civil-service examination, he was on April 16, 1910, after a promotion examination, appointed inspector, class 2, new office, with compensation at the rate of $4 per diem, and was paid at that rate until his promotion to inspector, $5 per diem, on October 10, 1919. By his original petition filed April 13, 1916, plaintiff demanded judgment for additional compensation as an inspector of customs at the port of New York at the rate of $1 per day from April 16, 1910, to and including June 30, 1910, 76 days, amounting to $76, and at the rate of $2 per day from July 1, 1910, to and including April 10, 1916, 2,111 days, amounting to $4,222, in all the sum of $4,298. By an amended petition filed July 2, 1919, he demanded additional compensation at the rate of $1 per day for 3,363 days from April 16, 1910, to June 30, 1919, amounting to $3,363. By a second amended and supplemental petition filed November 12, 1920, upon which the case is submitted, the demand is for $3,465, at $1 per diem for the period from April 16, 1910, to and including October 10, 1919. During all of said period he had been paid at the rate of $4 per diem, and now contends that he was entitled to have been paid at the rate of $5 per diem. On October 9, 1919, he was promoted to inspector of customs at $5 per diem, and has since been paid at that rate.

The importance of this case is not measured alone by the amount involved so far as this particular plaintiff is concerned, for it is apparent from the record that quite a large number of other cases may depend upon the conclusions reached here, and we may therefore, in this fact, find justification for a somewhat extended discussion.

16 Consideration of the case must necessarily involve a review of a number of statutes and some other matters with reference to the organization and conduct of the customs service and this may perhaps best be done before going to questions of construction and application. The review will be made as brief as possible.

By the act of July 31, 1789 (1 Stat. 45), and the act of March 3, 1797 (1 Stat. 503), the compensation of inspectors was fixed, re-

spectively, at sums not exceeding $1.25 and $2 per day. By the act of March 2, 1799 (1 Stat. 704), fixing the compensation of customs officers the compensation of inspectors was fixed at "a sum not exceeding two dollars" per diem, and by the act of April 26, 1816 (3 Stat. 306), there was allowed "an addition of 50 per cent upon the sum allowed" by the last preceding act.

The act of April 29, 1864 (13 Stat. 61), authorized the Secretary of the Treasury to increase the compensation of inspectors "in such ports as he may think it advisable so to do, and may designate, by adding to the present compensation of said officers, a sum not exceeding one dollar per day," the increase not to extend beyond July 1, 1865. The act of March 2, 1865 (13 Stat. 460), extended the provisions of this act to July 1, 1866, and the act of July 23, 1866 (14 Stat. 208), continued it without limitation. Following these acts section 2733 of the Revised Statutes provided that each inspector should receive for each day actually employed $3 and section 2737 authorized the Secretary of the Treasury to increase the compensation of inspectors by a sum not exceeding $1 per day in such ports as he might think it advisable and may designate.

By the act of March 3, 1881 (21 Stat. 429), it was provided that hereafter the Secretary of the Treasury may appoint inspectors of customs at a compensation less than $3 per day when in his judgment the public service would permit.

By the act of December 16, 1902 (32 Stat. 753), the Secretary of the Treasury was authorized to increase the compensation of inspectors of customs at the port of New York as he might think advisable and proper by adding to their then compensation a sum not exceeding $1 per day, such additional compensation to be for work performed at unusual hours for which no compensation was then allowed and as reimbursement of expenses for meals and transportation while in the performance of official duties.

The deficiency act of June 30, 1906 (34 Stat. 636), appropriated $31,000 or so much thereof as might be necessary to pay inspectors of customs of the port of New York "the difference between the per diem salary of $4 paid them during the months of October, November and December, 1905, and their proper per diem salary for the same period ($5 per diem) in accordance with the act of Congress, approved December 16, 1902," and by the act of March 4, 1907 (34 Stat. 1373), $940 was appropriated to enable the Secretary of the Treasury "to pay certain inspectors of customs of the port of New York the difference between the per diem salary of $4 paid them during the months of October, November, and December, 1905, and their proper per diem salary of $5 for the same period."

By the act of March 4, 1909 (35 Stat. 1065), the Secretary of the Treasury was authorized "to increase and fix the compensation of inspectors of customs as he might think advisable not to exceed
17 in any case the rate of $6 per diem and in all cases where the maximum compensation is paid no allowance shall be made for meals and other expenses incurred by inspectors when required to work at unusual hours."

The act of August 24, 1912 (37 Stat. 434), directed the President to effect a reorganization of the customs service and report the same

to Congress, the reorganization to become effective for the fiscal year 1914 beginning July 1, 1913, and to remain in force until otherwise provided by Congress. The reorganization thus directed was reported to Congress on March 3, 1913, and may be found in Volume VI. Compiled Statutes of 1916, beginning at page 6513.

Since the chief reliance of plaintiff's counsel seems to be upon the Cochnower case, 248 U. S., 405, and 249 U. S., 588, it is well to determine in the first instance whether the facts in the two cases are in effect the same or whether any material difference appears. Cochnower, having theretofore served in various capacities and at various salaries and then being "Storekeeper No. 13, class 2," was on June 16, 1908, effective from date of new oath, appointed "as inspector No. 228, class 4, with compensation at the rate of $5 per diem," in which position and at which rate he served until July 1, 1910, when, by virtue of an order appointing him as inspector, class 2, $4 per diem, his compensation was reduced to that amount. It is said in the opinion that the plaintiff's petition showed that he was appointed on June 13, 1908, an inspector at $5 per diem and served at that rate until July 1, 1910, "when he was reduced to $4 per diem" and the case is treated as one involving simply a reduction of salary and it is turned largely upon the construction of section 2 of the act of March 4, 1909, particularly upon the construction of the words "increase and fix" used therein. It was, of course, not questioned that the statute authorized the Secretary of the Treasury within the stated limits to "increase" the compensation of inspectors and that it also authorized him to "fix" such compensation. But it was held contrary to the construction of this court that the language did not authorize a reduction in compensation. Cochnower had been appointed before the passage of the act of March 4, 1909, at a time when all inspectors of customs were being paid $5 per day and the action of the Secretary of the Treasury as complained of served to work a reduction in his compensation. The plaintiff in this case was appointed subsequent to the passage of that act. He was specifically appointed as inspector, class 2, new office, at $4 per day and has suffered no reduction from that salary.

The stated difference between the two cases seems to us a material one, and while referring to the Cochnower case there are other features which it may be as well to mention here. The claim as presented in the Cochnower case was for $2 per day, the difference between the reduced pay of $4 per day and a claimed pay of $6 per day. The judgment directed by the Supreme Court was for $1 per day, the difference between the reduced pay of $4 per day and a determined legal pay of $5 per day, the additional $1 per day being rejected. It is also to be observed that the judgment directed was for the period from July 1, 1910, the date of the reduction, to June 30, 1913, inclusive, the last day before the taking effect of the reorganization of the customs service by the President as directed by the act of August 24, 1912. While it was held in the Cochnower case that the Secretary of the Treasury had no right to reduce Cochnower's compensation from $5 to $4 per day, the holding was apparently upon the theory that the statutory compensation of an inspector was $5 per day, which the Secretary had no right to reduce.

There is to our minds another feature of that case which, if presented to the Supreme Court, a fact as to which we are not informed, was evidently not presented as it occurs to us, and upon that theory is not discussed. We do not mention it here because of any disposition to take issue with anything said in the Cochnower case, but because of its bearing upon the instant case and perhaps more strongly than upon the Cochnower case.

It appears from the findings in this case that from April 16, 1910, subsequent to the passage of the act of 1909, to June 30, 1910, 25 inspectors of customs, of which this plaintiff was one, were appointed at the port of New York, inspectors, class 2, new offices, at a compensation of $4 per diem, and that upon July 1, 1910, there became effective a reorganization of the customs service under which inspectors were classified in three classes at, respectively, $4, $5, and $6 per diem, 74 being assigned to the $4 class, 296 to the $5 class, and 52 to the $6 class, and that the assignments to such classes were the result of a grading and classification and not because of any extra service performed or any work required outside of usual hours. The details of this reorganization are more fully set out in the findings. The Secretary of the Treasury and the collector of customs had construed the act of March 4, 1909, as authorizing a classification of the service, and upon July 1, 1910, when it is said that Cochnower's salary was reduced from $5 to $4 per day, this classification was in effect. The change in Cochnower's salary from $5 to $4 per day is treated as a reduction of a statutory salary and upon that basis may be conceded to have been unauthorized. In referring briefly to this feature of the situation it is said in the opinion of the court in the Cochnower case that—

"It is, however, urged that the act implies minimum and maximum salaries especially of inspectors and also the power of classification of inspectors. We are not called upon to dispute it. The effect or the power does not enlarge the authority to increase salaries into an authority to decrease them. The power given can otherwise be accommodated."

It seems to us that the change in Cochnower's salary from $5 to $4 per diem is not under the circumstances to be regarded as a decrease in a statutory salary but rather a demotion in a classified service. If there was authority under that act to classify the inspectors at the port of New York and create classes, respectively, at $4, $5, and $6 per day, there must have been in the appointing power authority to demote from the $5 to the $4 class, and if there was a demotion in a classified service it was not a reduction in a statutory salary. This leads necessarily to the question of whether under the act of March 4, 1909, a classification was authorized.

As bearing upon this question there is first for consideration the construction put upon the act by the Secretary of the Treasury, whose duty it was to administer it. He construed the act as permissive and as authorizing a classification of inspectors, not a new theory
19 but in line with that prevailing under former acts, although somewhat differently applied. There is next for consideration

the conclusion which it seems to us must be drawn from the action of the Supreme Court in the Cochnower case taken in connection with the demands of the plaintiff. The plaintiff did not sue alone to recover the difference between the salary paid him after July 1, 1910, and the salary he was theretofore receiving, but he sought to recover th difference between the salary paid him after July 1, 1910, and the maximum of $6 per diem authorized by this act, upon the theory clearly that the act fixed the statutory compensation of inspectors at $6 per diem. This contention was not sustained by the Supreme Court, and since it is clearly apparent from the act itself that it authorized a maximum salary of $6 per diem it must be concluded that the act was by the Supreme Court regarded as permissive in its character. Indeed the language of the act itself clearly indicates that a graduation in salaries was contemplated, for under its language there must necessarily follow a difference in compensation unless the service of all inspectors was the same and all were to receive the maximum salary. But the act authorized the Secretary of the Treasury to act "as he might think advisable" and clearly contemplated that allowances might be paid to inspectors receiving less than the maximum salary which could not be paid to those receiving such maximum. It would seem that if this act is to be regarded as mandatory the conclusion must have been reached, as claimed by Cochnower, that when the Secretary fixed the salary of some inspectors at $6 per diem that became the statutory salary under the act and he would have been permitted to recover $2 per diem instead of the $1 awarded.

But to determine the situation as it existed on the 1st of July, 1910, when Cochnower was demoted, and as it existed when this plaintiff was appointed in April, 1910, and as it existed when Cochnower was appointed at a salary of $5 per diem, it is necessary to consider also the act of 1902. If the act of 1909 was permissive in its character it would seem that the act of 1902 must also be so construed. The language of the two acts in their essence is strikingly similar. By the act of 1902 the Secretary of the Treasury was clearly not directed to increase the compensation of inspectors, but he was "authorized" to increase the compensation "as he may think advisable and proper" by adding $1 per day, etc. The salary being paid inspectors of customs at the time of the passage of this act was $4 per diem. It does violence to the language of the act clearly importing a discretion to say that it increased the compensation of all inspectors to $5 per diem and fixed that compensation as a statutory compensation. And this statement involves no issue between us and the holding in the Cochnower case, for it is not necessary in order to sustain the holding in that case to conclude that the act of 1902 by its terms fixed the salary of inspectors at $5 per diem. The situation is sufficiently met under the theory of that case when it is said that the act being permissive in its character authorized the Secretary of the Treasury in his discretion to increase salaries of inspectors to $5 per diem, and when he had, as in the Cochnower case, exercised that discretion, Cochnower's salary then became fixed at $5 per diem by virtue not alone of the statute but by virtue of the exercise by the Secretary of the Treasury of the authority conferred upon him by the statute.

20 But let us consider these statutes and their operation a little further. The contention in the Cochnower case that this act of 1909 fixed the salary of inspectors at $6 per diem was, as we have seen, not sustained by the Supreme Court and that theory upon which the original petition in this case was based has been abandoned. The theory now is in the instant case that by the act of 1902 the salary of inspectors was fixed at $5 per day, and therefore this plaintiff, when appointed at $4 per day, was entitled to $5 per day. It would seem that the same process of reasoning, in the light of the decision of the Supreme Court, which would prompt the abandonment of the claim of this plaintiff for $2 additional per day on and after July 1, 1910, must prompt the abandonment of claim for any compensation other than that paid. By the plan of reorganization under the act of 1909, provision was made for inspectors of different classes with relative salaries of $4, $5, and $6 per day. The statute fixed a maximum of $6 per day, but that it did not fix a statutory salary of $6 per day for all inspectors is decided. And it is so decided notwithstanding the fact that the salary of some inspectors was fixed at $6 per day. The conclusion as to the interpretation of the act is obvious. The right existed under that act to appoint inspectors at $5 per day. And if the right to thus classify inspectors and grade salaries accordingly existed it is difficult to find any basis for the conclusion that there was not also authority to provide for another class at $4 per day.

To sustain the theory that this might not be done and therefore to sustain the plaintiff's claim, it is necessary to revert to the preceding act of 1902; conclude that that act fixed the salary of inspectors at $5 per day; that all inspectors were entitled to receive that salary and that the act of 1909 conferred no power to reduce, by reclassification or otherwise, the salary thus fixed.

But if the act of 1909 did not fix inspectors' salaries at $6 per day, much less, apparently, did the act of 1902 fix them at $5 per day. Before referring to its phraseology let us revert to conditions existing at the time of its passage. Before its passage inspectors were receiving $4 per day, and after its passage inspectors then in the service and then inspectors, class 2, with compensation at $4 per day, were appointed "inspectors of customs, class 4, new offices, with compensation at the rate of five dollars ($5) per diem each." It is assumed that when this act was passed the statutory salary of an inspector was $4 per day. But, although they were then being paid that salary, the law clearly did not so require.

When the statutes were revised in 1874 and afterward published in the second edition, known as the Revised Statutes, 1878, section 2733 was made to say that inspectors of customs should receive $3 per day, and section 2737 authorized an increase of $1 per day in such ports as the Secretary might think advisable and designate. Section 2733, we venture to say, did not reflect the law as it then existed, which it was no doubt intended should be the case, but it was so enacted. It may be observed here that this is the first declaration fixing a salary for inspectors instead of fixing a maximum. But there followed the act of March 3, 1881 (21 Stat., 429), over-

looked in some discussions of the matter, providing that the Secretary of the Treasury may appoint inspectors of customs *at a*
21 *compensation less than $3 per day* (italics ours) when in his judgment the public service would permit.

Following so soon after the revision of 1878, it may reasonably be assumed that the very purpose of this legislation was to get away from the idea of a fixed salary as provided in section 2733, and resort to the practice prevailing from the beginning of fixing a maximum and leaving its application to the Secretary of the Treasury.

We think therefore it may be confidently asserted that when the act of 1902 was passed there was not a fixed statutory salary of $4 per diem for inspectors, even though under statutory authority they were being paid that sum. Add to this situation a consideration of the language used in that act, and any foundation for the contention that it fixed a statutory salary of $5 per day seems to vanish into thin air. The act itself authorized an increase of $1 per day in the compensation of inspectors at the port of New York as the Secretary of the Treasury "may think advisable and proper," thus clearly conferring a discretion, and more, it provided it should be as compensation for services of a character which it may be assumed might or might not be performed alike by all employees of that class.

If, then, the statute itself did not fix a specific salary the only remaining basis, apparently, for the contention that there was a fixed salary must be found in the fact that the Secretary, under the authority of that act, did appoint many, and for ought we know, all of the inspectors, then class 2 at $4 per diem, "inspectors, class 4, $5 per diem." If in fact he saw fit to then exercise his discretion for the benefit of all the inspectors he certainly was not thereby deprived of his discretion, if he had seen fit so to exercise it, to retain all or any part of them in class 2 at $4 per diem and deny them increases if he did not think it "advisble and proper." And if his statutory discretion remained, how can it be said that he could not, as in the case of the plaintiff herein, appoint him an inspector, class 2, at $4 per diem? But again, and for application here, we must not forget that the act of 1881 specifically authorized the appointment of inspectors, not at $4 or $3 per diem but at less than $3. And the purpose of that act, we think, was to remove a statutory bar to the exercise of a discretion which had existed for the better part of a century.

It is contended that the two statutes, or more properly speaking, provisions in deficiency appropriation acts which appropriated money to pay certain inspectors the difference between $4 per diem, which they had received for a certain period of three months, and a statutory salary of $5 per diem, amounted to a legislative interpretation of the act of 1902 to the effect that that act fixed a statutory salary at $5 per diem for inspectors of customs.

It is not necessary to reach any such conclusion because of the action had by Congress in these matters. The act of 1902, which scarcely seemed to be a fit subject for legislative interpretation, was not at all ambiguous in its terms. If not ambiguous there was no cause for the application of any rules of construction and no basis

for resort to legislative interpretation. In fact, if there is any ambiguity in the situation the ambiguity arises by reason of the declarations of Congress in the deficiency acts referred to. If Congress desired to provide that the salaries of all inspectors of cus-
22 toms should be $5 per day it had power to do it in a proper way. It probably had no such intention.

Aside from the discretionary feature of the act of 1902, already discussed, that act provided that such additional compensation should be for certain extra services performed at unusual hours, etc., and for certain expenses, and to conclude that Congress meant to interpret that act as providing a fixed salary for all inspectors requires a conclusion that Congress not only disregarded the discretion conferred by the act, but determined also that all inspectors were in the discharge of the extra duties for which the additional compensation was to be allowed.

By one of the deficiency acts referred to Congress did appropriate money to pay inspectors at New York the difference between the $4 per day they had received during the months of October, November, and December, 1905, and "the proper per diem salary for the same period ($5 per diem), in accordance with the act of Congress approved December 16, 1902." And by the other act similar provision was made in small amount to pay "certain" other inspectors.

The period involved was that between the order of October 2, 1905, and the order of January 8, 1906, referred to in Finding V. The first order evidently contemplated a return by reduction in classification to a basic pay of $4 per day and the payment of $1 additional for each day when services were performed at unusual hours and the second order restored the condition existing before the first. Just what the situation to be met by the deficiency appropriation was, is not clearly shown, and we are not informed whether payment was to be made to all inspectors or in the same amounts or upon a basis of equalization.

We think an examination of certain decisions of the Comptroller of the Treasury furnishes the reasons why these changes were made and shows that they were made in an attempt to meet administrative difficulties, and were justified, but we do not attach enough importance to the matter to justify going into the reasons in detail. The meat of the contention, so far as there is any, is found in the language of the deficiency acts referring to $5 per day as the "proper per diem salary."

From some standpoint not shown the Secretary evidently concluded that he ought to adjust pay for this period on a $5 per diem basis. As shown by official records he feared that if he made these payments from the current appropriation he would create a deficiency therein, and he thought it better to ask a deficiency appropriation for the purpose. If outside of the record, it does not do violence to our general, if not judicial, knowledge of such matters to assume that a provision in a deficiency bill appropriating a considerable sum of money to be paid to certain employees would not have gotten very far if upon its face it might not controvert the idea of a gratuity. Some reason must be given. Of what im-

portance was phraseology when money was wanted? But further discussion is not justified. We can not conclude that a plain, unambiguous act can be thus changed in its whole import by an assumed legislative construction for which there is no foundation.

Aside from the application of the pertinent parts of what has been said there are for consideration some fact peculiar to the in-
23 stant case. Ryan was appointed inspector on April 16, 1910, and therefore at a time when the act of March 4, 1909, was the last legislation bearing upon salaries of inspectors. He, with others, was appointed "inspector, class 2, new office, with compensation at the rate of $4 per diem, each, to take effect from date of new oath." His oath taken April 16, 1910, recited that he had been appointed "inspector, class 2." The appointment recited that the position to which he was appointed was a new office. It is not to be inferred from this recital that the collector's office in New York had never before had a classified position as inspector, class 2. For many years theretofore, and in fact, continually since the civil-service law became operative, inspectors at the port of New York had been designated by classes. The explanation of the designation of these offices to which Ryan and others were then appointed as "new offices" is found in the fact, as shown in the findings, that in January, 1906, for the purpose of restoring these officers to the grades occupied by them before October, 1905, the inspectors then in office and then designated as inspectors, class 2, at a salary of $4 per diem, had been appointed inspectors, class 4, at a salary of $5 per diem and by the order thus appointing them, their positions as inspectors, class 2, thus vacated, were abolished. It had been the practice whenever all employees in any one class were appointed to another class to order the positions vacated to be abolished. Apparent vacancies were thus avoided.

At and before the time of Ryan's appointment a committee appointed by the collector at the port of New York was at work on a plan of reorganization which was finally recommended by Collector Loeb to and approved by the Secretary of the Treasury and which as to the whole office became effective July 1, 1910. This plan or reorganization contemplated a classification of the inspectors at $4, $5, and $6 per diem and, although, as to the whole office the reorganization was not effective until July 1, 1910, the beginning of a new fiscal year, these new appointments made in April theretofore and other new appointments made between that time and July 1, 1910, were made in anticipation of this classification, as inspectors, class 2, salary $4 per diem. Ryan therefore from the date of his appointment received the proper salary of the office and grade to which he was appointed, and it was never during the period here involved reduced.

The position of inspector of customs at the port of New York had been within the provisions of the civil service act and the regulations thereunder from the time that said act first became operative. A board of examiners for the customs service at the port of New York had been created by the Civil Service Commission and regulations promulgated governing the examinations for appointment and for

promotions in that service. Under the civil service law a classified employee in class 2 was entitled to receive a salary of $1,400 per year and not more than $1,600. Salaries of inspectors at the port of New York were and always had been upon a per diem and not upon an annual basis. Under the rules, therefore, of the Civil Service Commission a per diem employee whose compensation was fixed at a given rate per diem fell automatically into the class indicated by his compensation, and a per diem employee receiving $4 per diem or $1,460 per annum, figured upon the basis of $4 per diem for
24 each day of the year, fell automatically into class 2, and reversing the reasoning, if by virtue of his examination he was eligible to a class-2 appointment his salary must be fixed upon the basis authorized for that grade—that is, $1,400 and not more than $1,600. After first appointment as inspector he might be promoted to a higher class without re-examination. Previous to his promotion, examination and appointment as inspector, Ryan had, on January 29, 1909, been promoted to and appointed a clerk, class 1, salary $1,200, as a result of a first-grade promotion examination. His appointment on April 16, 1910, as an inspector at $4 per diem was the result of a promotion examination which served to place him in class 2. His eligibility then was to a class-2 appointment. A class-2 appointee must receive at the maximum a salary less than $1,600 per annum. The highest salary on a per diem basis to which Ryan was then eligible was $4.38 per diem, or $4 stated in even dollars. The conclusion, therefore, seems to be forced that he was not then eligible to an appointment to a position the salary of which was $5 per diem. Inspectors receiving salaries of $5 per diem were and at all times during the operation of the civil service law had been rated as inspectors, class 4. Ryan was never appointed an inspector, class 4, until October 9, 1919, and never theretofore held that office. To hold that from the time of his appointment in April, 1910, he was entitled to receive $5 per diem compensation is to hold that he was then appointed an inspector, class 4, to which he was ineligible, and if he had been so appointed his appointment under the civil service act would have been invalid.

There is one other feature of this case for consideration. If the theory of the plaintiff is correct and he in fact was entitled to receive compensation at the rate of $5 per diem from the date of his appointment we are of the opinion that it was incumbent upon him to assert his claim within at least a reasonable time thereafter. This suit has been long pending in this court for reasons not necessary to state until now the plaintiff is in the attitude of asserting a claim which, at $1 per diem, amounts to $3,465. But eliminating the additions to the claim made by two amended and supplemental petitions the fact is that when he first asserted his claim the statutory period of limitations was within three days of expiration and he was then for the first time, so far as appears, asserting a claim which had been permitted to accrue from April 16, 1910, to April 10, 1916, a period of six years less six days. In his original petition he had asserted a claim for $1 per day from the date of his appointment to and including the 30th of June of that year and at $2 per day from that date on to and including April 10, 1916. During all of this period he had

received the compensation which we are justified in assuming he had expected to receive and all that he expected to receive when he was appointed and having been paid each month as inspectors are regularly paid he had, so far as appears, at no time asserted any right to compensation other than that received by him. The Supreme Court has declared itself very emphatically with reference to the effect of such conduct on the part of a Government employee. There are so many manifest reasons why a Government employee should not be permitted for a long period of time to receive without protest the compensation which it may be assumed that he and his appointing officer both deemed him entitled to receive and afterwards assert a claim for a large amount of accrued compensation, that it is not deemed necessary to discuss them here. We refer to the case of United States v. Garlinger, 169 U. S. 316 at 322 and cases cited.

It is not necessary to invoke all the propositions stated to justify a conclusion against the right of the plaintiff to recover but upon them all there would seem to be no possible room for any other conclusion. We are of the opinion that the plaintiff is not entitled to recover, that his petition must be dismissed, and we have so ordered.

Graham, Judge; Hay, Judge; Booth, Judge, and Campbell, Chief Justice, concur.

VII. *Judgment of the Court.*

At a Court of Claims held in the City of Washington on the Twenty-first day of February, A. D., 1921, judgment was ordered to be entered as follows:

The Court, upon due consideration of the premises find in favor of the defendant, and do order, adjudge and decree that the plaintiff, as aforesaid, is not entitled to recover and shall not have and recover any sum in this action of and from the United States; and, that plaintiff's petition be and the same hereby is dismissed: And it is further ordered, adjudged and decreed that the United States shall have and recover of and from the plaintiff herein the sum of Nineteen Dollars and fifteen cents ($19.15), the cost of printing the record in this court, to be collected by the Clerk, as provided by law.

By THE COURT.

VIII. *Plaintiff's Application for and Allowance of an Appeal.*

The claimant makes application for Appeal to the Supreme Court of the United States.

SPOOR & RUSSELL,
Attys. of Record.

DUDLEY & MICHENER.

Filed March 21, 1921.

Ordered: That the above appeal be allowed as prayed for.

By THE COURT.

March 21, 1921.

27 Court of Claims.

No. 3323.

THOMAS F. E. RYAN

vs.

THE UNITED STATES.

I, F. C. Kleinschmidt, Assistant Clerk Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the argument and submission of case; of the findings of fact and conclusion of law; of the opinion of the Court by Downey, J.; of the judgment of the Court; of the plaintiff's application for and allowance of an appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Washington City this Twenty-third day of March, A. D., 1921.

[Seal of the Court of Claims.]

F. C. KLEINSCHMIDT,
Assistant Clerk Court of Claims.

Endorsed on cover: File No. 28,219. Court of Claims. Term No. 292. Thomas F. E. Ryan, appellant, vs. The United States. Filed April 9th, 1921. File No. 28,219.

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